IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3995 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MD LALA - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
Ms. Archana Raval, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 07/09/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order quashing and setting aside the petitioner's

placement in the seniority list Annexure 'B', 'C' and 'D', and to restore the same on the basis of Annexure 'A', i.e., to say, to place the petitioner's name above the name of Shri H.R. Patel and then to consider the name for promotion to the post of Deputy Registrar if found fit with effect from 8.3.1996 with consequential benefits. By way of amendment, the petitioner prayed to strike down the Government Circular dated 2.4.1970 and/or to declare that the petitioner's seniority in the cadre of Under Secretary is to be fixed from the date of promotion.

2. It is the contention on behalf of the petitioner that the petitioner was initially appointed as an 'Assistant' on 1.1.1967; was promoted as Section Officer on 1.7.1978; and thereafter was promoted as 'Under Secretary' on 27.10.1989 and since then he has been holding the said post. It is submitted by the petitioner that every year a Seniority List of Gujarat State

Service Class-I Officers is published by the respondent showing the position as on 1st day of January of the year and in the seniority lists showing the position as on 1.1.1990; 1.1.1991; 1.1.1992; and 1.1.1993 his name was shown at the correct appropriate place looking to continuous officiation. It is further submitted by him that in the seniority list as on 1.1.1993 the petitioner was shown at Serial No. 47 above one H.R. Patel; however, in the seniority list showing the position as on 1-1-1994, the name of the petitioner was shown at Serial No. 79 and the name of H.R. Patel was shown at Serial No. 42. It is further submitted by him that, in the seniority list showing the position as on 1.1.1995, the name of the petitioner was at Serial No. 58 and H.R. Patel was placed at Serial No. 21. It is submitted by the petitioner that as soon as the petitioner came to know that in the seniority list his name is mentioned after the said H.R. Patel he requested the respondents

to put his name above the name of H.R. Patel. It is submitted by the petitioner that not only the placement of the petitioner in the seniority list was not corrected, but 3 persons junior to the petitioner as per the seniority position prior to 1.1.1993 came to be promoted to the post of Deputy Secretary and therefore the petitioner has preferred the present Special Civil Application.

3. It is submitted by Shri IS Supehia, learned advocate appearing for the petitioner that normal rule of promotion is based upon continuous officiation in a particular post and on that basis the petitioner was given seniority upto the year 1993 and there is no rule so as to deviate from the normal rule. It is submitted by him that the case of the petitioner for promotion has not been considered when the cases of six persons as mentioned in the petition are considered because of lower seniority position. It is submitted that if the petitioner's case was

considered he would have been promoted as he had a good service record for the last 5 years which is required to be taken into consideration for promotion. Shri Supehia has further submitted that the Circular dated 2.4.1970 is liable to be struck down on the ground that the said Ciruclar provides for reckoning the seniority of a promoted person from the date he is brought on the unconditional list and not from the date of promotion. It is further submitted that the said Circular is hit by Article 14 of the Constitution inasmuch as a junior person who would find place in the unconditional list would become senior even though both are promoted simultaneously and senior is treated as such as per the promotion order and therefore it is requested to allow the present Special Civil Application.

4. The petition is opposed by the respondent State Government and affidavit-in-reply is also filed on behalf of the respondents. It is

submitted that the seniority of Gujarat State Service (Secretariat) Class-I is not published every year. Actually, a booklet containing information regarding birth-date, posts, date of promotion etc., of officers born on the Gujarat State Service (Secretariat) Class-I as on 1st day of January of the respective year is published by the Government every year which is not a seniority list of the Gujarat State Service (Secretariat) Class-I Officers. It is further submitted that however the names of the officers are shown as per the inter-se seniority on the basis of their inclusion in the unconditional select list or provisional select list as the case may be. It is further submitted that the petitioner was temporarily promoted as 'Under Secretary' on his inclusion in the provisional select list as on 19.9.1989 along with his juniors and he took over charge as Under Secretary on 27.10.1989. Accordingly, in the booklet showing information of Secretariat Class-

I Officers as on 1.1.1990, his name was shown at Serial No. 115 and the name of Shri HR Patel was shown below Serial No. 116. Similarly, in the booklet showing information of Secretariat Class-I Officers as on 1.1.1991; 1.1.1992; and 1.1.1993 the name of the petitioner was shown over his senior H.R. Patel and others. It is further submitted that in the meantime a meeting of the Departmental Promotion Committee was held on 25.9.1992 to consider the names of the officers promoted as per the provisional select list dated 19.9.1989 for inclusion in the unconditional select list and the cases of all the officers for their inclusion in the unconditional select list were considered by the Committee carefully. It is further submitted that in the case of petitioner confidential reports after his promotion for the period from 11.11.1989 to 31.3.1990 were available, and for the period from 1.4.1990 to 31.5.1990, and dated 1.6.1990 to 3.8.1990 the Confidential Reports were not

written due to short period. In the Confidential Reports for the period from 4.8.1990 to 31.3.1991 the petitioner got an adverse remark which was retained even after considering his representation. It is submitted that, on overall review of his work after his promotion as Under Secretary, the Committee considered him unfit for his inclusion in the unconditional select list dated 19.9.1989 and recommended to continue him in the provisional list below the Under Secretaries who were included in the unconditional select list, until his C.Rs., for further one year became available. It is further submitted that the recommendation of the Committee was accepted by the Government and the GPSC also gave its consent to continue the petitioner provisionally in the select list of 19.9.1989 vide its letter dated 10th February 1993. It is, therefore, requested to dismiss the present Special Civil Application.

5. Heard the learned advocates for the parties. Considering the affidavit-in-reply, it is not in dispute that the petitioner had adverse remarks in his Confidential Reports. As per the reply, there was no seniority list prepared as contended on behalf of the petitioner showing the position as on 1.1.1991; 1.1.1992; and 1.1.1993 and it was only a booklet containing information regarding birth-date, posts, date of promotion etc., of the officers born of the Gujarat State Service Class-I Secretariat. The petitioner was promoted temporarily along with his juniors and when the case of the petitioner came to be considered for promotion by the Departmental Promotion Committee he was found unfit and therefore his name was recommended to continue in the provisional list below the Under Secretaries who were included in the unconditional select list. In view of the above, when the name of the petitioner was continued in the provisional list below the Under Secretaries who were included in

the unconditional select list, until his Confidential Reports for further one year became available and when the said recommendation of the D.P.C., came to be accepted by the Government and the GPSC, it cannot be said that the action of the respondents in putting the petitioner below the said Shri HR Patel in the seniority list is in any way illegal and/or contrary to the provisions of law. No case is made out by the petitioner even to strike down the Circular dated 2.4.1970. It is also required to be noted that the petitioner claims seniority over the said HR Patel and other officers. However, none of the persons as mentioned by the petitioner is joined as party-respondent in the Special Civil Application who are likely to be affected if the petitioner is placed above them in the seniority list.

6. For the reasons stated above, there is no substance in the Special Civil Application and

the same is required to be dismissed and it is accordingly dismissed. Rule is discharged. Ad-interim relief stands vacated forthwith. There will be no order as to costs.

[M.R. Shah, J.]

RMR.